IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Jerry DOTY, et al.	Conf. No.	7831
Serial No.:	09/753,307	Art Unit.:	2614
Filed:	December 29, 2000	Examiner:	Karen L. LE
For:	METHOD FOR SWITCHING ACTIVE CALLS		

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
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APPLICANT'S BRIEF

UNDER 37 C.F.R. § 41.37

Appeal is taken from the Examiner's Final Office Action mailed January 03, 2008, finally rejecting claims 1-19 in this application.

This Appeal Brief is in furtherance of the Notice of Appeal in this case filed on April 03, 2008.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

A single copy of this brief is submitted in accordance with 37 C.F.R. § 41.37(a)(1).

This Brief contains these items under the following headings, and in the order set forth below.

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I.   REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

Cisco Technology, Inc. is the real party in interest.

II.   RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 41.37(c)(1)(ii)

There are no other appeals or interferences known to Applicant, the Applicant's representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS
37 C.F.R. § 41.37(c)(1)(iii)

Status of All the Claims:

1.   Claims presented: 1-19

2.   Claims withdrawn from consideration but not canceled: None

3.   Claims canceled: None

4.   Claims pending: 1-19, of which:

     a.   Claims allowed: NONE

     b.   Claims rejected: 1-19

All the rejected claims, namely claims 1-19, are being appealed. The appealed claims are eligible for appeal, having been finally rejected.

IV. STATUS OF AMENDMENTS
37 C.F.R. § 41.37(c)(1)(iv)

A first Amendment After Final was filed in this application on March 03, 2008, and was entered as per the Advisory Action dated March 31, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER
37 C.F.R. § 41.37(c)(1)(v)

The present invention relates to telephone switching technology and computer networking technology, and more particularly to telephone and internetworking systems that use digital signal processors to handle calls (*see* specification, page 1, lines 6-8).

Claim 1 recites a method for switching active calls between entities on a network device, the method comprising: determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls (*see, e.g.*, specification, page 4, lines 11-12; and FIG. 1, ref. 12); collecting information about a current call on the first processor while the current call is being processed by a first entity (*see, e.g.*, specification, page 4, lines 26-27; and FIG. 2, ref. 30); initializing a second processor residing in the network device with the first processor with the information while the current call is being processed on the first processor (*see, e.g.*, specification, page 4, line 29; and FIG. 1, ref. 18); switching the current call from the first processor to the second processor (*see, e.g.*, specification, page 5, lines 6-9; and FIG. 2, refs. 36, 38, and 40); releasing the first processor from further processing of the call (*see, e.g.*, specification, page 5, lines 9-10); and repeating the switching of the current call from the first processor until the first processor is free from all active calls for maintenance (*see, e.g.*, specification, page 4, lines 13-14).

Claim 9 recites a computer-readable medium, having embodied therein software code that when executed results in: identifying that a time has been reached for an upgrade to a first processor actively handling calls in a network device (*see, e.g.*, specification, page 4, lines 11-12; and FIG. 1, ref. 12); collection of information about a current call on the first processor while the current call is being processed by the first processor (*see, e.g.*, specification, page 4, lines 26-27; and FIG. 2, ref. 30); initialization of a second processor in the network device with the information while the current call is still active on the first processor (*see, e.g.*, specification,

page 4, line 29; and FIG. 1, ref. 18); switching of the current call from the first processor to a second processor (*see, e.g.*, specification, page 5, lines 6-9; and FIG. 2, refs. 36, 38, and 40); direction of the second processor to retrain and accept the current call (*see, e.g.*, specification, page 5, lines 1-5); and repeating until the first processor is free of current calls (*see, e.g.*, specification, page 4, lines 13-14).

Claim 12 recites a network device, comprising: at least two processing entities (*see, e.g.*, specification, page 3, lines 21-23; and FIG. 1, refs. 18 and 22) residing in the network device (*see, e.g.*, specification, page 2, line 27 through page 3, line 14; and FIG. 1, ref 10), each able to handle at least one active call (*see, e.g.*, specification, page 3, lines 21-22); a connector operable to connect incoming phone lines to the at least two processing entities (*see, e.g.*, specification, page 3, lines 15-16; and FIG. 1, ref. 14); and a controller (*see, e.g.*, specification, page 3, lines 25-26; and FIG. 1, ref 24) to: determine that a time has been reached for an upgrade to a first processor that is actively handling calls (*see, e.g.*, specification, page 4, lines 11-12; and FIG. 1, ref. 12); and switch each active call from one entity to another without interruption (*see, e.g.*, specification, page 4, lines 9-10), and to repeatedly switch active calls on the first entity until the processor is free for maintenance (*see, e.g.*, specification, page 4, lines 13-14).

Claim 14 recites a network device, comprising: at least two means for handling active calls residing in the network device (*see, e.g.*, specification, page 3, lines 21-23; and FIG. 1, refs. 18 and 22); a means for connecting the means for handling active calls with means for transmitting phone calls (*see, e.g.*, specification, page 3, lines 15-16; and FIG. 1, ref. 14); a means for determining that a time has been reached for an upgrade to a first processing means that is actively handling calls (*see, e.g.*, specification, page 4, lines 11-12; and FIG. 1, ref 24); and a means for switching each active calls from a first processing means for handling active calls to another processing means for handling active calls without interruption (*see, e.g.*, specification, page 4, lines 9-10; and FIG. 1, ref 24), and for repeatedly switching active calls on the first means for handling active calls and until the first processing means is free for maintenance (*see, e.g.*, specification, page 4, lines 13-14; and FIG. 1, ref 24).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

The Examiner has rejected claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over Chong et al. (U.S. 6,205,557) in view of Denby, et al. (U.S. 6,976,062). The Applicant believes that the Final Office Action is in error on this point and that the Examiner only intended to reject claims 1-4, 6, 7, and 9-19 under Chong and Denby. The Applicant pointed this error out to the Examiner in the Amendment After Final filed on March 03, 2008, but the Examiner did not respond to this point in the subsequent Advisory Action.

The Examiner has rejected claims 5 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Chong et al. (U.S. 6,205,557) in view of Denby, et al (U.S. 6,976,062) further in view of Zeck (US Publication No. 2002/0101605).

For the convenience of the Board of Appeals, the following documents have been reproduced and are attached:

- Pre-Appeal Brief filed April 03, 2008, attached as Exhibit "1";
- Advisory Action dated March 31, 2008, attached as Exhibit "2";
- Amendment After Final filed March 3, 2008, attached as Exhibit "3";
- Final Office Action dated January 3, 2008, attached as Exhibit "4";
- Amendment filed October 15, 2007, attached as Exhibit "5"; and
- Office Action dated July 25, 2007, attached as Exhibit "6".

VII. ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

A.   Grouping of Claims

For purposes of the 35 U.S.C. § 103(a) rejections, the claims include eleven groups. Claim 1 comprises a group. Claims 2-4 are grouped together. Claim 5 comprises a group. Claim 6 comprises a group. Claim 7 comprises a group. Claim 8 comprises a group. Claim 9 comprises a group. Claim 10 comprises a group. Claim 11 comprises a group. Claims 12, 13, 14, and 16-19 are grouped together. Claim 15 comprises a group.

B.   The Examiner Has Not Established Prima Facie Obviousness

1.   The Examiner has not provided any supporting rationale for the proposed combination of Chong and Denby.

In the Final Office Action dated January 3, 2008, claims 1-4, 6, 7, and 9-19 are rejected under the combination of Chong and Denby. The Examiner acknowledges that Chong does not teach the claimed feature of determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls (*see* Final Office Action, page 3). The Applicant agrees with this statement because the entire disclosure of Chong is directed to managing calls after a processor has failed and thus is not actively handling calls. The Examiner then proposes that Denby teaches this feature and that it would be obvious to combine Chong and Denby. Specifically, the Examiner states "it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teach [sic] of Denby into Chong's system in order to determine that an upgrade time has arrived." In other words, the Examiner merely states that a first reference teaches one part of the claimed invention and a second reference teaches another, and therefore it is obvious to combine them. However, this bald assertion does not establish *prima facie* obviousness. MPEP § 2141(III) states:

> The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "'[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" KSR, 550 U.S. at ___, 82 USPQ2d at 1396.

The MPEP goes on to provide several exemplary rationales to support an obviousness rejection. The Examiner does not provide any supporting rationale for the rejection other than the fact that the references purportedly teach elements of the claims. Therefore, the Examiner has not established prima facie obviousness for the combination of Chong and Denby.

2.   The Examiner has not provided any supporting rationale for the proposed
combination of Chong, Denby, and Zeck.

The combination of Chong, Denby, and Zeck is used by the Examiner to reject claims 5
and 8. However, in the rejection of claim 5, the Examiner once again simply asserts that the
combination is obvious without providing any supporting rationale (*see* Final Office Action,
page 6).

With respect to the rejection of claim 8 under Chong, Denby, and Zeck, the Examiner
does not even point to any teachings in Denby or Zeck as teaching the claimed features; nor does
the Examiner provide any supporting rationale for any possible combination (*see id*). Therefore,
the Examiner has not established prima facie obviousness for the combination of Chong, Denby,
and Zeck.

C.   The Proposed Combination of Chong and Denby is Improper

1.   Chong and Denby teach away from the combination proposed by the Examiner.

The combination of Chong and Denby proposed by the Examiner is improper because
Chong teaches away from the proposed combination. The Examiner acknowledges that Chong
does not teach the claimed feature of determining that a time has been reached for an upgrade of
firmware on a first processor that is still actively handling calls (*see* Final Office Action, page 3).
However, the Examiner then proposes that Denby teaches this feature and that it would be
obvious to combine Chong and Denby.

Chong specifically teaches that its invention addresses the problem in the prior art that
"new technology is needed to reduce the effects of the failures [of call processors] *between the
updates*" (*see* Chong col. 1, lines 29-32, emphasis added). Therefore, Chong specifically teaches
that the failures it is referring to are not analogous to reaching a time for a firmware upgrade;
they happen *between* upgrades. Despite this teaching in Chong, the Examiner is proposing that it
is obvious to modify Chong to replace its 'failure determination' with a determination that a time
has been reached for a firmware upgrade. This proposed combination is contrary to the
teachings of Chong which specifically refer to determining that a device has failed between
upgrades.

MPEP § 2141.03(VI) states "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." The teachings of Chong are contrary to the combination proposed by the Examiner. Therefore, the proposed combination is improper.

2.   The Examiner is using impermissible hindsight in rejecting the claims under the combination of Chong and Denby.

MPEP § 2142 states "impermissible hindsight must be avoided and the legal conclusion [of obviousness] must be reached on the basis of the facts gleaned from the prior art." Regarding the combination of Chong and Denby, the Examiner proposes that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teach [sic] of Denby into Chong's system in order to determine that an upgrade time has arrived. When the detection method in Chong is applied earlier (apply before the processor is failed) then all calls that are transferred will also include all active calls at the time the second server is being initialized" (see Final Office Action, page 3). However, everything that the Examiner is pointing to as justifying the combination comes from the applicant's own disclosure and is therefore impermissible hindsight.

There is no suggestion in Chong to apply its redundant call system to determine upgrade times; the entire disclosure of Chong is directed to managing a call when a server fails. Denby has nothing to do with call processing and thus could not provide any rationale for the proposed combination. In essence, the Examiner has read the applicant's disclosure, seen all the inventive principles relating to preventative upgrades embodied therein, and then found those principles obvious in view of a patent that deals specifically with handling device failures and has nothing to do with preventative maintenance. This is the very definition of impermissible hindsight. Therefore, the applicant submits that the combination of Denby with Chong is improper.

D.   35 U.S.C. § 103(a) Rejections Under Chong and Denby

1.   Claim 1 is Allowable Over the Combination of Chong and Denby

a)   The combination does not teach initializing a second processor while a current call is being processed on a first processor.

Claim 1 recites "initializing a second processor residing in the network device with the first processor with the information while the current call is being processed on the first processor". The Examiner proposes that Chong teaches this feature at standby call server 141 and col. 5, lines 22-23 (*see* Final Office Action, page 2). However, the only time a switch is made from the active call server 140 to the standby call server 141 in Chong is when the call server has failed (*see, e.g.,* Chong, col. 3, lines 11-14 stating "[a]s shown in Fig. 3, the database 103 may include the standby call server 141. In one embodiment, the standby call server 141 is used to backup the active call server 140 *in the event of a failure of the active call server* 140" [emphasis added]). Therefore, as the first processor has failed, it cannot be processing the current call when the second server is being initialized. The portion of Chong pointed to by the Examiner (column 5, lines 22-23) merely states "[a]t some time subsequent to the receipt of the response, the interface server 120 determines that the active call server 140 has failed. The interface server then designates the standby call server 141 as the new active call server." This portion does not say anything about standby call server 141 being initialized while active call server 140 is still processing a call; this portion of Chong makes clear that standby server 141 does not even become involved until after active server 140 has already failed, and thus is not processing a current call. Therefore, Chong does not teach initializing a second processor while a current call is being processed on a first processor, as recited in the claims. Denby does not teach anything about call initialization and transfer, and thus does not remedy this deficiency of Chong.

b)   The combination does not teach repeating the switching of calls from the first processor.

Claim 1 recites "repeating the switching of the current call from the first processor until the first processor is free from all active calls for maintenance." The Examiner proposes that Chong teaches this feature at col. 5, lines 18-19 (*see* Final Office Action, page 2). However,

there are no other active calls taught, suggested or mentioned in Chong, so Chong cannot teach repeating the transfer of calls. If there were any other calls on the first processor of Chong, they are already gone before switching even begins, because the first processor has already failed (*see* Chong, col. 3, lines 11-17). The portion of Chong pointed to by the Examiner (column 5, lines 18-19) states "[t]he call information is then copied and a copy 123 is forwarded to the standby call server 141." Nothing in this portion of Chong refers to repeating a call transfer process until a first processor is free for maintenance. Nowhere else in the disclosure of Chong does it refer to repeatedly transferring calls until a processor is free of calls because in Chong, the processor is free of calls at the moment it fails, which is before even the first transfer occurs. Therefore, Chong does not teach repeatedly switching active calls from a first processor, as recited in the claims. Denby does not refer to transferring calls at all, and thus does not remedy this deficiency of Chong.

> c) The combination does not teach determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls.

Claim 1 recites "determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls." The Examiner acknowledges that Chong does not teach this feature, but then proposes that Denby teaches this feature (*see* Final Office Action, page 3). The applicant agrees that Chong does not teach this feature, but disagrees that this feature is taught in Denby. Specifically, the Examiner cites to the Summary of Denby where it describes that a supplier of products can utilize Denby's system to remotely upgrade the products over a network (*see id*). However, Denby does not teach that any of these products are processing calls, or more specifically, that a determination is made to upgrade the products while the products are actively handling calls. The disclosure of Denby has nothing to do with call processing, therefore, it cannot teach that a determination is made to upgrade firmware while a processor is actively handling calls. Consequently, Denby does not make up for this deficiency of Chong.

d)   The combination does not teach releasing the first processor from further processing of the call.

Claim 1 recites "releasing the first processor from further processing of the call." The Examiner has not pointed to any specific portions of Chong as teaching this feature (*see* Final Office Action, page 2), and the Applicant finds no such teachings. This feature is not taught in Chong for the same reason as the initialization feature discussed above; in Chong, the first processor has failed before the call is transferred to the second processor. Therefore, the first processor cannot be released from further processing of the call. Consequently, Chong does not teach this feature of the claim. Denby does not refer to releasing processors at all, and thus does not remedy this deficiency of Chong.

e)   The combination of Chong and Denby does not render the claimed invention obvious because the combination does not teach all of the features of claim 1.

As detailed above, the combination of Chong and Denby does not teach:
- initializing a second processor while a current call is being processed on a first processor;
- repeating the switching of calls from the first processor;
- determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls; or
- releasing the first processor from further processing of the call.

All of these features are recited in claim 1. The disclosure of Chong is based on transferring a call after a processor has failed; not to clear the processor for maintenance. Consequently, it is not surprising that Chong does not teach these features of claim 1. Denby has nothing to do with call processing and thus does not remedy these deficiencies of Chong. Therefore, the Applicant respectfully requests that the Board overturn the Examiner's 35 U.S.C. § 103(a) rejection of claim 1.

2.   The combination of Chong and Denby does not teach processors being located within the same module, in different modules on the same card, or on different cards in the network device, as recited in claims 2-4.

Claims 2-4 depend from claim 1 and are patentable for at least the same reasons as claim 1, as argued above. Further regarding claims 2-4, the claims refer to the processors being located within the same module, in different modules on the same card, and on different cards in the network device, respectively. The Examiner proposes that all of these features are taught in Chong at "Fig.2, DB 103; Fig. 3, server 140 and 141; Fig. 4, processors 170 of 140 and 141" (*see* Final Office Action, page 3). However, none of these portions of Chong say anything about processors located in the same module, different modules on the same card, or different cards in a network device. Chong does not make any reference in its disclosure as to where the processors are located other than to say that they are located in separate servers 140 and 141 (*see* Chong col. 3, lines 26-31). Therefore, Chong does not teach the features of these claims. Denby does not mention any call processors or their locations, and thus does not remedy this deficiency of Chong. As neither of the cited references teaches the features of these claims, claims 2-4 are allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejections of claims 2-4.

3.   The combination of Chong and Denby does not teach initializing a second processor comprising initiating a retrain sequence on the second processor, as recited in claim 6.

Claim 6 depends from claim 1 and is patentable for at least the same reasons as claim 1, as argued above. Further regarding claim 6, the claim recites "initializing a second processor further comprises initiating a retrain sequence on the second processor." The Examiner proposes that Chong teaches this feature at col. 5, lines 22-30 (*see* Final Office Action, page 4). However, the cited portion of Chong teaches that a call from the failed active call server 140 can be transferred to the standby call server 141 because the standby call server 141 already has call information. Therefore, Chong does not teach any retraining of the standby call server 141 in order to transfer the call; the standby call server 141 has already been set up to accept the call

from the failed active server 140. Therefore, Chong does not teach initializing a second processor by initiating a retrain sequence, as recited in the claim. Denby does not teach initializing a second processor at all, and thus does not remedy this deficiency of Chong. As neither of the cited references teaches the features of claim 6, the claim is allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 6.

       4.   The combination of Chong and Denby does not teach information about a current call including modulation, as recited in claim 7.

Claim 7 depends from claim 1 and is patentable for at least the same reasons as claim 1, as argued above. Further regarding claim 7, the claim recites "information about a current call includes modulation." The Examiner proposes that Chong teaches this feature at "Col. 2, lines 43-44" (*see* Final Office Action, page 4). However, the cited portion of Chong does not say anything about call information including modulation. The only thing Chong says about call information is that it might include a telephone number (*see* Chong col. 2, lines 40-41). Therefore, Chong does not teach call information including modulation, as recited in the claim. Denby does not teach call information at all, and thus does not remedy this deficiency of Chong. As neither of the cited references teaches the features of claim 7, the claim is allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 7.

       5.   The combination of Chong and Denby does not teach several features of claim 9.

Claim 9 recites several features that are similar to the features of claim 1 discussed above. For example, claim 9 recites:

- initialization of a second processor in the network device with the information while the current call is still active on the first processor;
- repeating until the first processor is free of current calls; and
- identifying that a time has been reached for an upgrade to a first processor actively handling calls in a network device.

For the sake of brevity, the arguments presented above with respect to claim 1 will not be repeated here. However, the Applicant submits that claim 9 is allowable over the combination of Chong and Denby for at least the same reasons as those described above for these features with respect to claim 1.

6. The combination of Chong and Denby does not teach a medium comprising a downloadable file, as recited in claim 10.

Claim 10 depends from claim 9 and is patentable for at least the same reasons as claim 9, as argued above. Further regarding claim 10, the claim recites "said medium further comprises a downloadable file." The Examiner proposes that Chong teaches this feature at "Col. 6, liens 56-67" (*see* Final Office Action, page 4). However, the cited portion of Chong actually teaches that the query processor 170 can be any of various types of computing devices; it does not say anything about a computer readable medium comprising a downloadable file. The remaining disclosure of Chong also does not make any mention of a downloadable file. Denby does not teach a downloadable file and thus does not remedy this deficiency of Chong. As neither of the cited references teaches the features of claim 10, the claim is allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 10.

7. The combination of Chong and Denby does not teach a medium comprising an image file uploadable into a digital signal processor, as recited in claim 11.

Claim 11 depends from claim 9 and is patentable for at least the same reasons as claim 9, as argued above. Further regarding claim 11, the claim recites "said medium further comprises an image file uploadable into a digital signal processor." The Examiner proposes that Chong teaches this feature at "Col. 6, liens 56-67" (*see* Final Office Action, page 4). However, the cited portion of Chong actually teaches that the query processor 170 can be any of various types of computing devices; it does not say anything about a computer readable medium comprising an image file uploadable into a digital signal processor. The remaining disclosure of Chong does not remedy this deficiency. Denby does not teach an image file uploadable into a digital signal processor and thus does not remedy this deficiency of Chong. As neither of the cited references

teaches the features of claim 11, the claim is allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 11.

        8.   Claims 12, 13, 14, and 16-19 are Allowable Over the Combination of Chong and Denby

Insofar as claims 12, 13, 14, and 16-19 have been rejected under the same grounds, Applicant argues the claims as a group. The arguments below are made with respect to claim 12 on behalf of the group.

        a)   Claim 12 contains allowable features similar to those of claim 1 discussed above.

Claim 12 recites several features that are similar to the features of claim 1 discussed above. For example, claim 12 recites:

- repeatedly switch active calls on the first entity until the processor is free for maintenance; and

- determine that a time has been reached for an upgrade to a first processor that is actively handling calls.

For the sake of brevity, the arguments presented above with respect to claim 1 will not be repeated here. However, the Applicant submits that claim 12 is allowable over the combination of Chong and Denby for at least the same reasons as those described above for these features with respect to claim 1.

        b)   The database taught in Chong is not equivalent to the claimed features.

Claim 12 recites "at least two processing entities residing in the network device." The Examiner proposes that the database 103 in Chong is equivalent to the claimed network device. However, Chong teaches that database 103 actually includes multiple network devices, including: an active call server 140, a standby call server 141, a high speed interface, two interface servers 120 and two administrative servers 150 and 151 (*see* Chong FIG. 3). Chong goes on to describe the high speed interface as being a local area network (*see* Chong, col. 3, lines 4-5). Therefore, the database 103 of Chong is not a single network device including two processing entities; it is a collection of many individual network devices and networks. This is

supported by the description of Figure 3 in the Brief Description of the Drawings as "a distributed database architecture" (*see* Chong col. 2, line 3). A distributed database architecture involves distributing various pieces of a database among several network devices; a distributed database architecture is not a single network device. Therefore, the database 103 of Chong is not equivalent to at least two processing entities residing in a network device, as recited in claim 12. Chong and Denby do not teach any other features that could be considered equivalent to the claimed network device. Therefore, claim 12 is allowable over the combination of Chong and Denby. Consequently, the Applicant requests that the Board reverse the Examiner's rejections of claims 12, 13, 14, and 16-19.

> 9. The combination of Chong and Denby does not teach a modem ISDN channel aggregation device, as recited in claim 15.

Claim 15 depends from claim 14 and is patentable for at least the same reasons as claim 14, as argued above. Further regarding claim 15, the claim recites "the device further comprises a modem ISDN channel aggregation device." The Examiner has not pointed to any specific portions of either Chong or Denby as teaching this feature (*see* Final Office Action, page 3) and the applicant does not find any such teachings. The words "ISDN", "aggregation", and "modem" are not found anywhere in the disclosures of either Denby or Chong. Therefore, the combination of Chong and Denby does not teach the features of claim 15. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 15.

> E. 35 U.S.C. § 103(a) Rejections Under Chong, Denby, and Zeck
>
> 1. The combination of Chong, Denby, and Zeck does not teach copying compression dictionary tables from the first entity and loading compression tables in a second entity, as recited in claim 5.

Claim 5 depends from claim 1 and is patentable for at least the same reasons as claim 1, as argued above. Further regarding claim 5, the claim recites "copying compression dictionary tables from the first entity; and loading compression tables in a second entity." The Examiner acknowledges that the combination of Chong and Denby does not teach these features, but then proposes that these features are taught in Zeck (*see* Final Office Action, page 6). Chong and

Denby do not teach copying information from a first entity to a second entity, and thus this teaching must come from Zeck in order for the combination to teach the features of the claim. However, although Zeck does teach dictionary compression methods, it does not teach that any compression dictionary tables are copied from a first entity or that compression tables are loaded into a second entity. Zeck does not teach that any compression tables are copied or loaded at all. Therefore, Zeck does not make up for the deficiencies of the combination of Chong and Denby. As none of the cited references teach the features of claim 5, the claim is allowable over the proposed combination. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 5.

2. The combination of Chong, Denby, and Zeck does not teach information about a current call including a country code, as recited in claim 8.

Claim 8 depends from claim 1 and is patentable for at least the same reasons as claim 1, as argued above. Further regarding claim 8, although the claim is rejected under the combination of Chong, Denby, and Zeck, the Examiner does not give any basis for the rejection of the claimed features in any of these references. The Office Action merely states that the recited country code is "old and well know [sic] in telecommunication system" (*see* Final Office Action, page 6). However, the claim specifically refers to information about a current call that is active on a processor including a country code. Therefore, general knowledge in the art about the existence of a country code does not render the claimed feature obvious. The Examiner has not provided any indication of how this purportedly well-known feature could be combined with the cited references or even which references it would be combined with. Consequently, the Applicant requests that the Board reverse the Examiner's rejection of claim 8.

D. Argument Summary

Chong teaches a system in which call information is stored in a standby call server so that when a primary call server fails, the standby call server can take over the call that was on the failed call server. Unlike the claimed invention, the system in Chong does not transfer calls that are currently active on one processor to a second processor. Consequently, it is not surprising
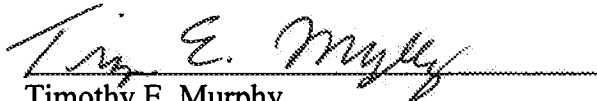
that Chong does not teach the features of the claimed invention. The proposed combinations with Denby and Zeck do not remedy the deficiencies in the teachings of Chong.

Because of the many and substantial differences between the claimed invention and the references, the Applicant submits that the claimed invention is patentable over these references.

CONCLUSION

For the foregoing reasons, Applicant requests that the Board reverse the Examiner's 35 U.S.C. § 103(a) rejections of Applicant's claims.

Respectfully submitted,
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The text of the claims on appeal (claims 1-19) is:

1.   (Previously presented) A method for switching active calls between entities on a network device, the method comprising:

determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls;

collecting information about a current call on the first processor while the current call is being processed by a first entity;

initializing a second processor residing in the network device with the first processor with the information while the current call is being processed on the first processor;

switching the current call from the first processor to the second processor;

releasing the first processor from further processing of the call; and

repeating the switching of the current call from the first processor until the first processor is free from all active calls for maintenance.

2.   (Previously presented) The method of claim 1 wherein the processors are digital signal processors located within the same module.

3.   (Previously presented) The method of claim 1 wherein the processors are located in different modules located on the same card.

4.   (Previously presented) The method of claim 1 wherein the processors are located on different cards in the network device.

5.   (Previously presented) The method of claim 1 wherein the method further comprises:

copying compression dictionary tables from the first entity; and

loading compression tables in a second entity.

6.   (Previously presented) The method of claim 1 wherein initializing a second

processor further comprises initiating a retrain sequence on the second processor.

7.   (Original) The method of claim 1 wherein the information about a current call

includes modulation.

8.   (Original) The method of claim 1 wherein the information about a current call

includes country code.

9.   (Previously presented) A computer-readable medium, having embodied therein

software code that when executed results in:

identifying that a time has been reached for an upgrade to a first processor actively

handling calls in a network device;

collection of information about a current call on the first processor while the current call

is being processed by the first processor;

initialization of a second processor in the network device with the information while the

current call is still active on the first processor;

switching of the current call from the first processor to a second processor;

direction of the second processor to retrain and accept the current call; and

repeating until the first processor is free of current calls.

10.   (Previously presented) The computer-readable medium of claim 9, wherein said

medium further comprises a downloadable file.

11.   (Previously presented) The computer-readable medium of claim 9, wherein said

medium further comprises an image file uploadable into a digital signal processor.

12.   (Previously presented) A network device, comprising:

at least two processing entities residing in the network device, each able to handle at least one active call;

a connector operable to connect incoming phone lines to the at least two processing entities; and

a controller to:

determine that a time has been reached for an upgrade to a first processor that is actively handling calls; and

switch each active call from one entity to another without interruption, and to repeatedly switch active calls on the first entity until the processor is free for maintenance.

13.   (Previously presented) The device of claim 12 wherein the controller is part of a processor located on one of the entities.

14.   (Previously presented) A network device, comprising:

at least two means for handling active calls residing in the network device;

a means for connecting the means for handling active calls with means for transmitting phone calls;

a means for determining that a time has been reached for an upgrade to a first processing means that is actively handling calls; and

a means for switching each active call from a first processing means for handling active calls to another processing means for handling active calls without interruption, and for repeatedly switching active calls on the first means for handling active calls and until the first processing means is free for maintenance.

15. (Original) The device of claim 14 wherein the device further comprises a modem ISDN channel aggregation device.

16. (Original) The device of claim 14 wherein the means for handling active calls further comprises digital signal processors.

17. (Original) The device of claim 14 wherein the means for handling active calls further comprise modules located on the same card.

18. (Original) The device of claim 14 wherein the means for handling active calls further comprises cards.

19. (Original) The device of claim 14 wherein the means for switching active calls further comprises a controller.

EVIDENCE APPENDIX

37 C.F.R. § 41.37(c)(ix)

NONE

RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(x)

NONE